

## **SECTION VII**

### ***NON-CONFORMING USES AND STRUCTURES***

#### **A. Policies.**

1. **General Policy.** Except as otherwise provided in an applicable annexation or development agreement, it is the City's general policy to allow non-conformities to continue to exist and be put to productive use. However, it is the City's intent to bring as many aspects of the nonconforming use, structure, sign, or lot into compliance with the *Land Use and Development Code* as is reasonably practicable, all subject to the limitations of this Section VII. The limitations of this Section VII are intended to recognize the interests of the property owner in continuing to use the property but to limit alterations, expansion of the nonconformity, and re-establishment of abandoned non-conforming uses; and, to limit the re-establishment of non-conforming structures that are substantially destroyed.
2. **Authority to Continue.** Any non-conformity created under application of previous land development regulations shall continue to be a legal non-conformity under this *Land Use and Development Code* and continue according to the provisions and requirements of this Section VII.
3. **Determination of Non-conformity Status.** The burden of establishing that a non-conformity lawfully exists is on the owner, not the City. Owners of non-conforming uses, structures or lots may request a "certificate of legal non-conforming status" by filing an application with the Director. The application shall be accompanied by documentation that establishes the approximate date that the use, structure, or sign was established. The Director may require additional information if deemed necessary to permit an accurate determination. Once issued, the owner may record the certificate in the Clerk and Recorder's office of the County in which the property is located, which shall run with the land and shall not be affected by changes of tenancy, ownership, or management, subject to the provisions, limitations and requirements of this Section VII and the *Land Use and Development Code*, as may be amended.
4. **Change of Tenancy or Ownership.** Changes of tenancy, ownership, or management of an existing non-conformity are permitted, and in such cases the non-conforming situation continues to be subject to this Section VII.

#### **B. Non-Conforming Uses.**

1. **Defined.** A "non-conforming use" includes any legally existing use, whether within a building or on a tract of land, which does not conform to the use regulations of this title for the district in which such non-conforming use is located, as of the effective date of Ordinance #1964, Zoning Regulations or as a result of subsequent amendments and

additions which have been or may be incorporated into the *Land Use and Development Code*.

2. **Change in Use.** An existing non-conforming use may only be changed to a conforming or permitted use and when so changed, the prior existing non-conforming use shall be deemed to have been abandoned, and such use may not thereafter be reinstated. A non-conforming use shall not be changed to another type of non-conforming use.
3. **Abandonment.** If active and continuous operations are not carried on in a non-conforming use during a period of sixty (60) days, such use shall not thereafter be re-established, and any subsequent use shall be in conformance with the provisions of the *Land Use and Development Code*, as it may be amended. The building, other structure or tract of land where such non-conforming use previously existed shall thereafter be occupied and used only for a conforming use.
  - a) Intent to resume active operations shall not affect the foregoing.
  - b) A non-conforming home occupation business activity shall be considered to be abandoned if the occupants of the dwelling who were conducting such non-conforming home occupation business discontinue either their occupancy of the dwelling or the non-conforming home occupation.
  - c) At such time as any non-conforming, individual mobile home existing on a private lot is removed from such lot or is vacated, the use shall be deemed abandoned and shall not thereafter be returned or occupied except in compliance with the *Land Use and Development Code*, as it may be amended.
4. **Enlargement and Expansion.**
  - a) **Structure Enlargement.** A structure or portion thereof devoted to a non-conforming use shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered except to change the use of the structure to one permitted in the applicable zoning district.
  - b) **Expansion of Non-conforming Uses.** A non-conforming use shall not be extended or expanded to any land or portion of property outside of any building that was not used for the non-conforming use when the use was legally established.
  - c) A non-conforming use may not be enlarged, expanded, or extended to occupy any parts of the building or structure housing such use that were not used when the use was legally established.
5. **Enlargement of Building and Expansion of Facilities, Equipment or Structures.** A proposal for the enlargement or expansion of a building containing a non-conforming use

shall require the approval of the Director. In considering such proposals, the Director shall make the following findings:

- a) The non-conforming use shall not be changed (except to a conforming use), expanded or enlarged as a result of enlargement, expansion or construction; and
- b) The enlargement, expansion or construction shall not result in the conversion of the non-conforming use of a seasonal to a year-round operation; and
- c) The enlargement or expansion of the building complies with all ordinances, codes as adopted, rules and regulations of the City.

**6. Accessory Uses.**

- a) No use that is accessory to a principal non-conforming use shall continue after the non-conforming principal use ceases to exist.
- b) No additional accessory use, building, or structure that did not exist when the non-conforming use was legally established shall be established on the site of a non-conforming use.

- 7. Relocation.** No person shall move a non-conforming use within the same parcel or to another parcel unless the use conforms with the use regulations of the applicable zoning district.

**C. Non-Conforming Structures.**

- 1. Defined.** A “non-conforming structure” includes any legally existing structure or building, except non-conforming signs as provided for in Subsection V. J.(9), which does not conform to the dimension standards for the district in which such non-conforming structure or building is located, the effective date of Ordinance #1964, Zoning Regulations, or as a result of subsequent amendments and additions which have been or may be incorporated into the *Land Use and Development Code*. For the purposes of this Section VII, “Dimensional Standards” means the lot area, lot width, setback, build-to line, floor area, floor area ratio, and height standards as set forth in the applicable provisions of the *Land Use and Development Code*, as it may be amended.
- 2. Application.** Subject to the limitations of this Section VII, a non-conforming structure may be occupied, operated and maintained in a state of good repair.
- 3. Exceptions.**
  - a) **Structures Granted Variances.** Structures granted a variance from the dimensional standards of either previous land development regulations or the *Land Use and Development Code* are not non-conforming, provided the

structure and owner comply with the terms of the variance approval and the variance has not otherwise lapsed or been abandoned.

- b) **Structures in Approved PUDs.** Structures in an approved PUD that are granted modifications from the dimensional standards of the *Land Use and Development Code* are not non-conforming.
  - c) **Prior Permit or Approval.** Any structure for which a building permit has been issued prior to the enactment or adoption of any ordinance by which the structure would be non-conforming, may be completed and used in accordance with the plans, specifications, and permits on which said building permit was granted, if construction is commenced within sixty (60) days after the issue of said permits and the work diligently prosecuted to completion. This Section VII is not intended to abrogate or annul any valid building permit, certificate of occupancy, variance, or other lawful permit.
4. **Enlargement and Expansion.** A non-conforming structure or portion thereof shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered except as may be provided in this Section VII or in order to change the structure to a structure conforming to the ordinances, codes as adopted, rules and regulations of the City.
5. **Enlargements and Extensions for Front and Side Yards.** The Director may approve enlargements and extensions to a non-conforming residential structure within the front, side and rear yard setbacks, as long as the structure is located in a residential district and used for residential purposes, if the following conditions are met:
- a) The enlargement does not encroach beyond the existing, non-conforming building line; and
  - b) The non-conforming structure's front or side building line is consistent with the average building lines of the adjacent structures, but in no instance may the expanded non-conforming structure be less than three feet (3') to a side property line, nor shall it obstruct a sight triangle; and
  - c) The property is not subject to other conditions or restriction from prior variances or other approvals that would otherwise restrict the proposed enlargement or extension.
6. **Enlargements and Extensions within an Existing Footprint.** The Director may approve enlargements and extensions of a non-conforming residential structure that does not increase the existing footprint of the structure (such as a dormer on a part of a building that encroaches into a setback or the enclosure of a non-conforming portion of a deck or porch) as long as all existing setbacks and height restrictions are maintained, and the structure is located in a residential district and used for residential purposes. The enlargement and extension may be approved if the following conditions are met:

- a) The non-conforming portion of the structure is not closer than five feet (5') to any side or rear property line; and
  - b) The property is not subject to other conditions or restrictions from prior variances or other approvals that would otherwise restrict the proposed enlargement or extension.
7. **Alterations.** A non-conforming structure may be structurally altered or repaired in any way permitted by the ordinances, codes as adopted, rules and regulations of the City. All alterations shall be subject to this Section VII's limitations regarding expansion and enlargement of the non-conforming structure or use.
- a) Alterations of the structure that comply with applicable dimensional standards or that decrease the degree of non-conformity are permitted, provided such alteration complies with all other applicable ordinances, codes as adopted, rules and regulations of the City.
  - b) The Director shall make the initial determination of whether a proposed alteration or expansion increases the degree of nonconformity.
8. **Repairs and Maintenance.**
- a) Ordinary repairs and normal maintenance required to keep non-conforming uses, structures, and signs in a safe condition shall be permitted. All ordinary repair and normal maintenance shall be subject to this Section VII's limitations regarding expansion and enlargement of the non-conforming structure or use.
  - b) If, due to a lack of repairs and maintenance, the Chief Building Official or Fire Marshall declares a non-conforming structure, or a portion of a structure devoted to a non-conforming use to be unsafe, unlawful, or in violation of the ordinances, codes as adopted, rules and regulations of the City, such structure shall thereafter be restored, rebuilt, or repaired as may be necessary to strengthen or restore it to a safe condition, in compliance with the ordinances, codes as adopted, rules and regulations of the City.
9. **Restoration.** A non-conforming building or a building containing a non-conforming use which has been damaged by fire, flood, explosion, accidental cause, natural catastrophe or other casualty may be restored to its original condition provided the following conditions are met:
- a) A building permit for the reconstruction is obtained within sixty (60) days of such calamity, work is commenced within one hundred and eighty (180) days and is completed within one (1) year; and
  - b) The cost of repairing the structure does not exceed fifty percent (50%) of the total replacement cost of structure; and

- c) The structure as reconstructed contains no greater floor area than before the casualty; and
- d) The structure as reconstructed shall not be more non-conforming than the original structure; and
- e) The total area occupied and used by the non-conforming use prior to the casualty has not been enlarged or expanded.

The Director may approve the reconstruction of non-conforming historically-designated structures or single-family residences in commercial or industrial zoning districts may be restored to its original condition provided the following conditions are met:

- a) A building permit for the reconstruction is obtained within sixty (60) days of such calamity, work is commenced within one hundred and eighty (180) days and is completed in one (1) year; and
- b) The structure as reconstructed contains no greater floor area than before the casualty; and
- c) The structure as reconstructed shall not be more non-conforming than the original structure.

10. **Relocation.** If a non-conforming structure should, for any reason, be moved from its original location, the relocated structure shall conform to the provisions of the applicable zoning district.

**D. Non-Conforming Lots.** Lots of record legally established but which, as of the effective date of Ordinance #1964, Zoning Regulations, or as a result of subsequent amendments and additions, which have been or may be incorporated into the *Land Use and Development Code*, no longer comply with the dimensional standards of the applicable zoning district are “non-conforming lots.”

1. **Single-Family Detached Dwellings on Non-conforming Lots.**

- a) **New Construction Allowed.** In any zoning district that allows single-family dwelling uses, a single-family residence and customary accessory buildings may be erected on any single legal non-conforming lot of record, when such lot is ineligible for lot combination under subsection 2) below. This provision applies even though such lot fails to meet the area or width requirements, or both, of the applicable zoning district. However, the minimum setback dimension requirements of the applicable zoning district must be met unless the Board of Adjustment grants a variance.
- b) **Enlargements Allowed.** Existing single-family dwellings located on non-conforming lots of record may be enlarged, expanded, or extended only if such action does not increase non-conformities with applicable setbacks or cause a new non-conformity, or unless the Board of Adjustment grants a variance.

**E. Combination of Lots.**

Two or more lots, or combinations of lots and portions of lots not separated by right-of-way, are considered to be a single, undivided lot for purposes of the *Land Use and Development Code* if all the following factors apply:

- a) The lots are in single and common ownership; and
  - b) The lots or parcels share continuous frontage; and
  - c) All or part of either or both lots does not meet the minimum lot area or lot width requirements stated for the applicable zoning district.
1. Two lots, not separated by right-of-way, shall be considered one single, undivided lot under the *Land Use and Development Code* for the purpose of accommodating a single-family dwelling, if all the following factors apply:
    - a) The lots are in single and common ownership and are of record on the effective date of this Development Code;
    - b) The lots share continuous frontage;
    - c) Each lot is a minimum of twenty-five feet (25') wide; and
    - d) The total combined lot area is at least five thousand (5,000) square feet.
  2. Development may proceed on any portion of such combined lots provided the development complies with the lot width and lot area requirements of the applicable zoning district to the maximum extent feasible using the total, combined area and width of the subject lots.

**F. Appeal.** Any decision or interpretation by the Director as permitted in this Section VII shall be made in accordance with the applicable procedures set forth in Section II., Administration, Procedures and Enforcement. The owner or applicant may appeal a determination of the Director to the Board of Adjustment in accordance with the applicable procedures set forth in Section II., Administration, Procedures and Enforcement.